

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



January 23, 2004

Agenda ID #3198

TO: PARTIES OF RECORD IN APPLICATION 03-08-028

Enclosed is the draft decision of Administrative Law Judge Barnett. The decision will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ Angela K. Minkin
Angela K. Minkin, Chief
Administrative Law Judge

ANG: avs

Decision **DRAFT DECISION OF ALJ BARNETT** (Mailed 1/23/2004)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Sierra Pacific Power Company (U 903 E) for Exemption from the Requirements of Cal. Pub. Util. Code Section 454.5.

Application 03-08-028
(Filed August 27, 2003)

DECISION GRANTING APPLICATION

Sierra Pacific Power Company (Sierra), requests an exemption from the provisions of Pub. Util. Code Section 454.5 governing the filing of utility procurement plans by California electrical corporations. Pursuant to the provisions of Section 454.5(i), the Commission shall grant such an exemption upon a showing of good cause.¹

Section 454.5 (a) requires the Commission to allocate electricity that the Department of Water Resources (DWR) provides under its power purchase agreements to the customers of each electrical corporation. Each electrical corporation is to file a proposed procurement plan with the Commission not

¹ Section 454.5(i) provides:

“An electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a request for exemption from this section, which the commission shall grant upon a showing of a good cause.”

later than 60 days after the Commission specifies the allocation of electricity. The proposed procurement plan must state the date that the electrical corporation intends to resume procurement of electricity for its retail customers, consistent with its obligation to serve. After Commission adoption of a procurement plan, the Commission is to allow the electrical corporation to resume electricity procurement no sooner than 60 days from the date of adoption of the plan.

Section 454.5(b) sets forth the issues that must be addressed in an electrical corporation's procurement plan including, but not limited to:

- a. the duration;
- b. the timing and range of quantities of each product to be procured;
- c. a competitive procurement process under which the electrical corporation may request bids for procurement-related services;
- d. an incentive mechanism, if any incentive mechanism is proposed, including the type of transactions to be covered by the mechanism, procurement benchmarks and other parameters needed to determine the sharing of risks and benefits;
- e. the standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known prior to execution of the transaction;
- f. procedures for updating the procurement plan; and
- g. a showing that the procurement plan will meet a number of specified goals, including achieving a 20 percent renewable resources portfolio and maintenance of a diversified procurement portfolio consisting of both short-term and long-term electricity and electricity-related and demand reductions products.

Sierra is a public utility that serves approximately 324,000 retail customers in California and Nevada. Sierra was incorporated in Nevada. Sierra is

authorized to transact business in the states of California and Nevada. Sierra provides electric service to approximately 44,000 customers in northeastern California, well below the 500,000-customer standard of Section 454.5(i). Sierra has never ceased its procurement activities in order to meet its retail and wholesale electric power needs.

Section 454.5 is part of the process to bring the major California electrical corporations back to creditworthy status and, once accomplished,² to authorize these electric public utilities to resume electric power procurement practices to meet load requirements.³ Pursuant to Assembly Bill (AB) 1890, the Commission required the three major California electrical corporations to sell all of the output from their utility-owned and contracted-for generation into the California Power Exchange (PX), and to secure all of their load requirements from the PX. This requirement was not applied to Sierra. Sierra continued to meet its load requirements for all of its retail operations as well as its wholesale needs through utility-owned generation and purchased power. The three major California electrical corporations divested a significant portion of their utility-owned generation resources. Sierra did not sell its generation resources in response to AB 1890.

Sierra has never sought DWR assistance in procuring electricity for Sierra's California retail sales. No Commission decision addressing DWR revenue requirements, rates to cover such revenue requirements, or allocation of DWR

² "The Commission now notes [in D.03-12-062, p. 40] that while PG&E is still operating under the terms of its Reorganization Plan, SCE has recently regained an investment-grade rating from S&P, Moody's and Fitch."

³ PG&E, SCE, and SDG&E resumed procurement on January 1, 2003 when DWR procurement authority expired on December 31, 2002.

contracts to California electrical corporations has been applicable to Sierra's California retail operations.

Sierra asserts that its utility-owned generation and its purchased power sources have resulted in reasonable rates. Sierra's California retail rates have been, and continue to be, among the lowest of any electric public utility regulated by the Commission. Currently, Sierra has 105 MW utility-owned and contracted renewable resources capacity other than hydroelectric facilities. Sierra's Resources Plan is filed with the Public Utilities Commission of Nevada. Sierra submits that the filing of a procurement plan is not necessary to resume its procurement practices, to provide reasonable retail rates in California, or to encourage diversification of Sierra's portfolio. Sierra therefore requests exemption from the requirements of Section 454.5 of the Pub. Util. Code.

There are no protests. A public hearing is not necessary. Sierra has shown that it is within the exemption provided by § 454.5 (i) and that it would serve no useful purpose to require it to file a procurement plan.

Comments on Draft Decision

The draft decision in this matter was mailed to the parties in accordance with § 311(g)(1), and Rule 77.7 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and replies were filed on ____.

Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. DWR does not provide electricity to the customers of Sierra, nor to Sierra.
2. Sierra is an electrical corporation that serves less than 500,000 electric retail customers within the state.

3. Sierra's utility-owned generation and purchased power sources have resulted in reasonable rates.

4. The preparation of a procurement plan would place an unnecessary cost on Sierra to be borne by Sierra's customers.

5. Sierra has shown good cause why it should be exempt from filing a procurement plan under § 454.5 (a).

Conclusion of Law

Sierra meets the exemption requirement of § 454.5 (i) and is exempt from filing a procurement plan under § 454.5 (a).

O R D E R

IT IS ORDERED that:

1. Sierra Pacific Power Company is exempt from the requirements of Pub. Util. Code § 454.5 governing the filing of utility procurement plans.
2. Application 03-08-028 is closed.

This order is effective today.

Dated _____, at San Francisco, California.